

IN THE MATTER OF
FIVE COUNTY BUILDERS AND CONTRACTORS
ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2890. Complaint, May 24, 1977 — Decision, May 24, 1977

This consent order, among other things, requires a Fort Myers, Fla., building trade association to cease entering agreement or engaging in any action that requires members and signatories to deal exclusively with association's bid depository, and impose sanctions on those parties who fail to restrict their dealings to such depository. The order further requires respondent to immediately reinstate recalcitrant participants previously suspended.

Appearances

For the Commission: *Thomas D. Wilson, Jr. and Truett M. Honeycutt.*

For the respondent: *John A. Noland, Henderson, Franklin, Starnes & Holt, Fort Myers, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named or designated in the caption hereof, and hereinafter more particularly named, designated, described and referred to as respondent, has violated the provisions of the Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Five County Builders and Contractors Association, Inc., hereinafter referred to as respondent corporation or FCBCA, is a nonprofit corporation, organized and existing under the laws of the State of Florida, with its principal office located at 2301 Fowler St., Fort Myers, Florida.

Respondent corporation was organized for, and serves its members as, an instrumentality which promotes cooperative activity among its members, collects business data from its members and generally purports to assist them in the operation of their businesses. One of the functions of respondent corporation is the operation of a bid depository. Said respondent corporation's membership, together with the membership of the bid depository of respondent corporation,

represents a substantial, if not dominant, part of the construction industry contractors in the lower and central Gulf Coast area of the State of Florida.

The membership of said bid depository consists of electrical, plumbing, heating, ventilation and air conditioning and general contractors, who perform their respective contracting services in Lee, Collier, Charlotte, Hendry and Glades Counties in the State of Florida. Members of said bid depository are entitled to, among other things, vote for the members of the bid depository committee of said respondent corporation.

The control, direction and management of the bid depository of respondent corporation is vested in a bid depository committee elected by and from the members of the said bid depository. The directives of the bid depository committee are carried out by the executive director of the respondent corporation.

PAR. 2. In the course and conduct of its business, respondent corporation has actively operated a bid depository which has aided, abetted, guided and assisted its membership in the unlawful acts and practices herein alleged. Several companies or firms which are members of the bid depository of respondent corporation and which maintain their principal places of business in states other than the State of Florida, submit or solicit bids through said bid depository which are, or may be, used by such companies or firms to award or be awarded building construction contracts. Furthermore, a considerable amount of the materials used in the construction that is the subject of said depository bid submissions and solicitations is shipped from various States of the United States into the State of Florida. Such activity and conduct engaged in by the membership of the bid depository of respondent corporation during the time periods described herein result in a constant current of trade in or affecting commerce in said services or materials between and among the various States of the United States. Accordingly, the acts and practices of the respondent corporation, including, but not limited to, the operation of said bid depository, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 3. Since at least 1973, respondent FCBCA, members of the bid depository of respondent FCBCA, officers and directors of respondent FCBCA have conspired to engage, and have engaged, in unfair and unlawful acts, policies and practices, the result of which is, or may be, to unlawfully hinder, restrain or destroy competition in providing electrical, plumbing, heating, ventilation and air conditioning, general contracting and other services related to building construc-

tion in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Pursuant to, and in furtherance of, said conspiracy, respondent has engaged in the following acts, policies and practices, among others:

Providing a bid depository service which purportedly assists members of the bid depository of respondent corporation in the awarding and securing of electrical, plumbing, heating, ventilation and air conditioning contracting services provided by electrical, plumbing, heating, ventilation and air conditioning contractors for the benefit of general contractors.

Pursuant to rules and regulations which govern the operation and administration of the bid depository and which rules and regulations were formulated, approved and implemented by the Board of Directors of the respondent corporation, participating members of the bid depository of said respondent corporation agree to submit bids exclusively through the aforesaid bid depository, and participating members of said bid depository agree to receive only those bids submitted through said bid depository.

Participating electrical, plumbing, heating, ventilation and air conditioning contractors who submit electrical, plumbing, heating, ventilation and air conditioning bids to general contractors not members of said bid depository of respondent corporation are subject to suspension from the use of said bid depository and fine for such conduct.

Likewise, member general contractors who receive bids from electrical, plumbing, heating, ventilation and air conditioning contractors not members of respondent corporation's bid depository are subject to suspension from the use of said bid depository and fine for such conduct.

PAR. 4. The capacity and tendency of the acts, policies and practices of the respondent as alleged in Paragraph Three have been, are or may be, to unlawfully restrict, restrain, hinder and destroy competition in providing electrical, plumbing, heating, ventilation, air conditioning and general contracting services in connection with building construction projects in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, within the intent and meaning of Section 5 of said Act.

PAR. 5. The policies, acts and practices of the respondent, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint and waivers and other provisions required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Act and the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of the Rules, the Commission hereby issues its complaint, making the following jurisdictional findings, and enters the following order:

1. Respondent Five County Builders and Contractors Association, Inc. is a nonprofit corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2301 Fowler St., Fort Myers, Florida.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of respondent and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Five County Builders and Contractors Association, Inc., its officers and directors, and the successors, assigns, agents, representatives and employees of said respondent, directly or indirectly, through any corporate or other device, or through any member of or signatory to its bid depository, in connection with the receipt, solicitation, use, submission or transmission of bids which are, or may be, employed in the awarding of

building construction contracts and subcontracts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any course of action, conspiracy, undertaking or agreement:

1. Which requires or provides that any member, signatory, company, firm or individual that employs or uses the bid depository of respondent corporation shall receive or solicit bids from, or submit bids to, only those companies, firms or individuals that are also members, signatories or participants in said bid depository;

2. Which subjects any company, firm or individual that employs or uses the bid depository of respondent corporation to suspension from participation in said bid depository or fine or any other kind of sanction, or the threat thereof, for receiving or soliciting bids from, or submitting bids to, any company, firm or individual that is not a member of the bid depository of said respondent corporation or that does not employ or use said bid depository;

3. (a) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any company, firm or individual for submitting bids to any company, firm or individual that is not a member of the bid depository of respondent corporation or that does not employ or use said bid depository;

(b) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any company, firm or individual for awarding contracts based upon bids received from any company, firm or individual that is not a member of the bid depository of respondent corporation or that does not employ or use said bid depository.

It is further ordered, That respondent immediately reinstate any company, firm or individual suspended from participation in said bid depository, which suspension resulted from conduct engaged in by respondent which hereinafter would amount to a violation of this order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to all present and future members, signatories, companies, firms or individuals that participate in said bid depository.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
ALBANO ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2891. Complaint, May 31, 1977 — Decision, May 31, 1977

This consent order, among other things, requires a Santa Ana, Calif., manufacturer and distributor of automatic gas-saver devices to cease misrepresenting the performance or efficacy of its products; that its devices will fit all engines; that these products are patented; or that they have been tested, inspected or recommended by government agencies. Further, the firm is required to substantiate all product claims; withdraw and destroy any promotional material containing false or unsubstantiated representations; make refunds to dissatisfied customers, within one year from time of product purchase; and disclose this refund policy in all advertising material. The order additionally requires the firm to maintain prescribed records; and institute a program of continued surveillance to ensure that its distributors conform to the terms of the agreement.

Appearances

For the Commission: *John M. Porter.*

For the respondents: *Edward J. Atkinson, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Albano Enterprises, Inc., a corporation, and Louis Albano, individually and as an officer of said corporation, and Joseph Albano, individually, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Albano Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 1570 E. Edinger, Santa Ana, California.

Respondent Louis Albano is an officer of the corporate respondent. Respondent Joseph Albano is the manager of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been